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LORD STOWELL: HIS LIFE AND THE DEVELOPMENT OF ENGLISH PRIZE LAW
By Edward Stanley Roscoe. Boston and New York: Houghton Mifflin Company. 1916. pp. x, 116.

The present is a time singularly appropriate for the appearance of a study of the life and work of William Scott, Lord Stowell, who, as sole judge of the High Court of Admiralty throughout the period of the Napoleonic wars, shaped, integrated, and to a large extent created the common law of prize. It is indeed, only in the last three years that his name has emerged from the shadow so long cast by his brother Eldon, the Lord Chancellor. And it is fortunate that this book should be by so great an authority on English prize law and a writer of such charm as Mr. Roscoe.

Lord Stowell's life is interesting, though not especially eventful. He was, curiously enough, an esteemed and appreciated member of the famous Johnson circle, and, with Reynolds and Sir John Hawkins, was one of Johnson's executors. His eighteen years at Oxford probably afford the explanation of Stowell's intimacy and sympathy with such men as Reynolds, Boswell, Burke, and Sheridan. And these Oxford years had also, as Mr. Roscoe points out, a permanent influence upon Stowell's legal work: "no one quite like him ever, in modern times, occupied a high judicial position."

The description of Doctors' Commons, where Stowell dwelt in company with the High Court of Admiralty and all its practitioners, is of considerable interest. So also is the history of the British prize court. Regretfully we learn that, with the opening in recent years of the admiralty courts to general advocates, the old title of proctor has fallen into disuse, so that one may no longer proclaim himself, with Benedict, "attorney at law, counsellor in equity, proctor in admiralty."

Although contemporary opinion based what scant claims to fame he was allowed upon his ecclesiastical judgments, it is Lord Stowell's prize cases that constitute his great work. This is partially due, of course, to his exceptional opportunities to develop prize law. When Stowell went upon the bench, in October, 1798, there were already arising the first of the prize cases that in the next few years were to deluge and perplex the courts of Great Britain and of the United States. And indeed it is remarkable how many of his famous cases were decided by Stowell in the first few months of his judicial career.¹ When he went upon the bench there existed no reports of prize cases, and the recollections of the judges and advocates, which aided a common-law court, were here largely lacking because of the long intervals of peace in which there were neither prize courts nor prize causes. So that text writers were largely relied on, and Grotius and Bynkershoek were of equal authority in British courts of prize and in French. This was now changed; with Lord Stowell's first decisions Christopher Robinson began his volumes of reports. Thus began the separation of English prize law from that of the Continent — a process which culminated last year in the *Zamora dictum*.

Of this nationalizing process which Lord Stowell's decisions inaugurated Mr. Roscoe fully approves. It is of course true that English prize law is thus harmonized with the rest of English municipal law — a result which may be scientifically pleasing to an English lawyer, but which can hardly be so pleasing to the aliens who alone can appear as claimants in the majority of prize cases. When once one admits, as Mr. Roscoe does (p. 85), that many of the decisions of the English prize court are "legally sound but indefensible from the point of view of commercial equity," it is obvious that the English court is following past decisions of its own in preference to a conflicting general law, whether of the sea, or of maritime nations. It would seem that England has made her

¹ For an interesting illustration of this, see the cases cited in 30 HARV. L. REV. 497, n. 2.

prize law conform to her common law at the expense of the harmony of international law. Mr. Roscoe recognizes this, to some extent at least, and offers the following truly British solution: "An assimilation of the prize law of other European countries to that of Great Britain can in the future only be obtained by the international recognition, as expressions of the law of nations, of particular reasoned British precedents. . . ." And this solution, as he justly says, "can scarcely be regarded as probable."

The chapters on "The Stowell Case Law and the Declaration of London," and on "The Stowell Case in the Great War," are valuable. The author regards the Declaration of London with much hostility, though conceding that it may be of some value to countries which have not the English case law of prize. And the existence of the English case law causes the author also to declare: "It is clear that an international Court of Appeal for prize cases is outside the range of possibility" (p. 92). The appendices are well arranged and of value.

The occasional rather naïve outcroppings of patriotism do not affect the value of the volume or destroy its charm. It is a book which should interest all lawyers and many laymen at this time.

RAEBURN GREEN.

CASES IN QUASI CONTRACT, SELECTED FROM DECISIONS OF ENGLISH AND AMERICAN COURTS. By Edward S. Thurston. St. Paul: West Publishing Company. 1916. pp. xv, 622.

This is an excellent case book. In fact the best on the subject now existing. Its six chapters, covering the conventional topics hitherto dealt with in text-books and case books, are: Nature of Quasi Contract, 50 pages; Benefits Conferred by Mistake, 182 pages; Benefits Conferred under Contract which has been Partially Preferred, 195 pages; Benefits Voluntarily Conferred without Contract, 56 pages; Benefits Conferred under Compulsion, 89 pages; Waiver of Tort, 41 pages. The arrangement of the subdivisions and the selection of cases seem to be admirable. There is of course no better proof of this than the use of the book in the class room, and the volume has well stood a six weeks' test with students. The only possible improvement of classification that might be suggested in the earlier portion of the book would be to place ch. II, 1, I, c, Mistake as to Collateral Matters, after ch. II, 2, IV, Mistake as to the Nature of Subject-Matter of a Contract. But this is arguable.

Many of the cases are new; more than two-thirds of them had not appeared in Scott's Cases. A partial test reveals that they have been excellently abbreviated, with the exception that an interesting point is omitted in *Haven v. Foster* 9 Pick. 112 (p. 228). The citation of cases in the notes is careful; and there seems to be no instance of the fault, exasperating to the teacher, of printing cases not in point. In case book making it is no doubt ordinarily wise to select for the notes, while indicating the weight of authority, only important decisions. This Professor Thurston has done well. But in a subject like Quasi Contract, which is still incompletely understood by the courts, and in which it is difficult to run down cases in digest, it would seem helpful to have a more exhaustive list of authorities in the notes than here appears; though this omission is partially remedied by the number of new principal cases. In any event the important recent decision on change of position of *Baylis v. Bishop of London*, [1913] 1 Ch. 127, should have appeared, or at least been referred to.

We can commend highly the quality of the paper. The book, containing over 600 pages, is less than 1¼ inches thick including the cover; and yet the paper takes readily and retains well pencil or ink annotations.

JOSEPH WARREN.